



(916) 445-5047

November 8, 1978

In your October 13, 1978, letter to our Chief Counsel, James J. Delaney, you asked our opinion as to whether the county assessor can ignore a 1977 value determination by his county assessment appeals board, make a new and independent 1977 valuation of that property, and then use that new valuation as the 1977 base year valuation instead of the valuation set by the county assessment appeals board.

We are of the opinion that the county assessment appeals board (AAB) decision of market value set for lien date 1977 is not controlling or binding upon the assessor as to his determination of market value under California Constitution, Article XIII A (Proposition 13). We believe the AAB's decision is not binding because it was made to determine market value of the property at a different point in time than now required under Proposition 13. The AAB finding of market value was as of March 1, 1977. The date of appraisal now required under Proposition 13 is as of the date of the sale or creation of the lease (February 1, 1977, in your case). Please see California Constitution, Article XIII A, Section 2(a). However, notwithstanding the foregoing conclusion, it would seem that the AAB value be accepted as correct in view of the fact that there was only 30 days separating the pre-Proposition 13 value date and the post-Proposition 13 value date.

Our question and answer number 7 of Assessors' Letter No. 78/159, which concludes the AAB's decision is binding upon the assessor for 1975 base year, is not inconsistent with the above opinion. For 1975 the date of the appraisal of market value of both the assessor and the AAB is as of March 1, 1978.

Therefore, in your case, the AAB finding of market value would be controlling upon the assessor only in the unique case where your lease was legally created on March 1, 1977 (i.e.,

November 8, 1978

the AAB finding of market value, and date the assessor is now to find market value, would both fall on the same point in time.)

We are of the opinion that the AAB's finding of market value of your property as of March 1, 1977, is admissible as evidence for proof of market value as of February 1, 1977. In addressing the subject of admissibility of evidence before the AAB, section 1609 of the Revenue and Taxation Code provides in part:

"The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs...."

We suggest there is compelling reason to admit the finding of market value by the AAB since that finding is as of a point in time only 30 days later than when the assessor is to now appraise. The evidence is particularly relevant since it is a quasi judicial finding that, but for a time difference of 30 days, would be res judicata upon the assessor.

We are not aware of any rule of law calling for this evidence to carry presumptive weight. Ultimately, the admissibility and probative weight given the evidence is properly a matter for the next AAB. Whatever its decision, we would expect the board to be reversed by the courts only for excess of jurisdiction, errors of law, abuse of discretion or insufficiency of the evidence.

Very truly yours,

Robert R. Keeling
Tax Counsel

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